

January 21, 1992  
REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

PROPOSED AMENDMENTS TO THE SAN DIEGO MUNICIPAL  
ELECTION CAMPAIGN CONTROL ORDINANCE

At the January 15, 1992, meeting of the Committee on Rules, Legislation and Intergovernmental Relations ("Rules Committee"), the City Attorney presented proposed amendments to the San Diego Municipal Election Campaign Control Ordinance ("Campaign Control Ordinance"). See City Attorney's Report to the Rules Committee dated January 10, 1992, and its attachments. The proposed amendments are also before you today.

At the Rules Committee meeting of January 15, Councilmember Wolfsheimer and Joseph S. Francis, the Executive Secretary-Treasurer of the San Diego-Imperial Counties Labor Council, AFL-CIO, raised questions about the proposed amendments. This report addresses their questions, as follows:

Councilmember Wolfsheimer's Question: Will the proposed amendments apply retrospectively or prospectively, especially with respect to a candidate or committee's failure to pay campaign debts within the time required?

Answer: The amendments will be applied prospectively. Although the amendments are intended for the most part to clarify existing law, since the amendments will affect substantive rights, the amendments should be applied prospectively. Sutherland Stat. Const. Section 22.36 (4th ed.).

To assist future enforcement, however, the City Attorney's Task Force proposes amending the Campaign Control Ordinance to clarify when failure to pay campaign debts constitutes a continuing violation (see proposed section 27.2946).

In light of the Councilmember's question, the City Attorney would also recommend a further amendment to the proposed ordinance pertaining to the time in which a prosecution of a misdemeanor must commence, for the reasons set forth here. The prosecution of a misdemeanor in California must be commenced (complaint filed) within one (1) year after the commission of the offense. Cal. Pen. Code Section 802(a). This statute presumably would govern violations of the Campaign Control Ordinance. However, insofar as violations of the ordinance would not be reported for several or many months after their commission, or because perpetrators would be motivated (if inclined) to engage in active concealment of such violations, the

allotted time period could easily expire before sufficient evidence is mustered to permit filing, or even before the crime is discovered.

Research has uncovered no general principle or provision of law that tolls criminal statutes of limitation such that the Campaign Control Ordinance could be enforced within a time period commencing with the date that the violation is discovered.

Therefore, the City Attorney strongly recommends that the following language be adopted as subsection (f) to the currently proposed penalties section (SDMC Section 27.2971):

- (f) Any limitation of time prescribed by law within which prosecution for a violation of any part of this Division must be commenced shall not begin to run until the discovery of the violation.

Joseph S. Francis's Question: Are the prohibition against organizations making contributions to committees that make independent expenditures (new Section 27.2947(b)) and the prohibition against committees that make independent expenditures from accepting contributions from organizations (new Section 27.2947(a)) constitutional as the sections pertain to candidate elections?

Answer: At the outset, the City Attorney points out that the proposed changes placed at issue by Mr. Francis are merely clarifications of existing City law (existing SDMC section 27.2942(a) and (c)). It is the City Attorney's position that U.S. Supreme Court decisions support the position taken in existing law and the proposed amendments to prohibit organizational contributions to independent committees in candidate races. See, e.g., *FEC v. National Right to Work Committee*, 459 U.S. 197, 208-210 (1982); see also, *First National Bank of Boston v. Belotti*, 435 U.S. 765, 787 n.26 (1978); *Austin v. Michigan Chamber of Commerce*, 494 U.S. , 108 L.Ed. 2d 652 (1990).

The City Attorney recommends that you adopt the proposed amendments with the change to Section 27.2791 as noted in this report.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

CCM:jrl:011(043.1)  
RC-92-3